

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Basic Service Tier Encryption	)	MB Docket No. 11-169
	)	
Compatibility Between Cable Systems and	)	PP Docket No. 00-67
Consumer Electronics Equipment	)	

**REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF  
TELECOMMUNICATIONS OFFICERS AND ADVISORS, THE NATIONAL  
ASSOCIATION OF COUNTIES, THE NATIONAL LEAGUE OF CITIES, AND THE  
UNITED STATES CONFERENCE OF MAYORS**

**I. INTRODUCTION**

The National Association of Telecommunications Officers and Advisors (“NATOA”),<sup>1</sup> the National Association of Counties (“NACo”),<sup>2</sup> the National League of Cities (“NLC”),<sup>3</sup> and The United States Conference of Mayors (“USCM”)<sup>4</sup> submit these reply comments in response

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<sup>1</sup> NATOA is a national trade association that promotes local government interests in communications, and serves as a resource for local officials as they seek to promote communications infrastructure development.

<sup>2</sup> NACo represents county governments, and provides essential services to the nation’s 3,068 counties.

<sup>3</sup> The NLC serves as a resource to and an advocate for the more than 19,000 cities, villages, and towns it represents.

<sup>4</sup> The USCM is the official nonpartisan organization of cities with populations of 30,000 or more. There are 1,192 such cities in the country today. Each city is represented in the Conference by its chief elected official, the mayor.

to the Notice of Proposed Rulemaking (“NPRM”), released October 14, 2011, in the above-entitled proceedings.

In the NPRM, the Commission seeks comment on “whether to retain the basic service tier encryption prohibition for all-digital cable systems” and tentatively concludes “that allowing cable operators to encrypt the basic service tier in all-digital systems will not substantially affect compatibility between cable service and consumer electronics equipment for most subscribers.”<sup>5</sup>

The Commission bases its conclusion on the belief that the number of subscribers adversely affected by the encryption of the basic service tier in all-digital systems would be “small”<sup>6</sup> and that appropriate consumer protection measures “for a limited period of time” would “minimize any potential subscriber disruption.”<sup>7</sup> The Commission’s proposed rule would permit encryption if: 1) “the cable operator offers its existing basic service tier subscribers . . . the equipment necessary to descramble or decrypt the basic service tier signals . . . on up to two separate televisions sets without charge for two years from the date of encryption;” 2) “the cable operator offers to its existing digital subscribers who have an additional television set currently receiving basic-only service without a set-top box, the equipment necessary to descramble or decrypt the basic service tier signals on one television set without charge for one year from the

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<sup>5</sup> See *In re Basic Service Tier Encryption, Compatibility Between Cable Systems and Consumer Electronics Equipment*, Notice of Proposed Rulemaking, MB Docket No. 11-169, PP Docket No. 00-67, FCC No. 11-153 (rel. Oct. 14, 2011) (“NPRM”) ¶ 1.

<sup>6</sup> NPRM ¶ 4.

<sup>7</sup> NPRM ¶ 1. In its comments, Comcast, the nation’s largest cable provider, states that “there likely will be very few customer complaints if the rules are modified as proposed,” citing the example of its digitization and encryption of its expanded basic tier in Portland, OR. According to Comcast, the company received only 12 calls out of 630,000 subscribers having difficulty with accessing encrypted channels on QAM TVs. See Comcast Comments, MB Docket No. 11-169, PP Docket No. 00-67, at 16-17 (November 28, 2011).

date of encryption;” and 3) the cable operator offers to all basic-only subscribers who receive Medicaid the equipment necessary to descramble or decrypt the basic service tier signals on up to two separate television sets without charge for five years from the date of encryption.”<sup>8</sup>

While we have some concerns with the actual impact encryption may have on subscribers, we believe the proposed rules, with some additional modifications, will benefit industry and protect consumers.

## **II. SUBSCRIBER NOTIFICATION**

The National Cable & Telecommunications Association (“NCTA”) suggests that the Commission’s proposed rule be amended to include a provision requiring cable system operators to notify existing customers at the time of encryption of the availability of the various offers of free set-top boxes “at least thirty days prior to the date of encryption” and “make[] the offers availabl[e] for at least thirty days prior to and thirty days after the date of encryption.”<sup>9</sup> We commend NCTA for advancing this notification provision and strongly urge the Commission to adopt it.<sup>10</sup> In addition, we ask that, in practice, cable providers go beyond the proposed minimum thirty-day periods to ensure that all existing subscribers, including institutional cable subscribers, are properly notified of their options under the proposed rule and have the time necessary to take advantage of the various offers.

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<sup>8</sup> *NPRM* at Appendix A.

<sup>9</sup> See NCTA Comments, MB Docket No. 11-169, PP Docket No. 00-67, at 12 (November 28, 2011).

<sup>10</sup> Comcast, the nation’s largest cable provider, has stated it “fully supports” NCTA’s proposed modifications and urges their adoption by the Commission. See Comcast Comments, MB Docket No. 11-169, PP Docket No. 00-67, at 16 (November 28, 2011).

### **III. ALL SUBSCRIBERS MUST BE PROTECTED**

The Commission should ensure that all subscribers, whether they be residential or “institutional cable subscribers, such as students in schools and workers in government buildings”<sup>11</sup> are protected by the proposed rule. It is imperative that the proposed rule not undercut or supplant services or plans found in existing franchise agreements. For example, many franchise agreements provide free services to anchor institutions, such as schools and libraries, and to government buildings, such as police departments. These institutional cable subscribers are unable to afford any additional costs with today’s strained local government budgets and the provision of free set-top boxes to these subscribers is essential.

In addition, the Commission must refrain from taking any action that would void or abridge other existing franchise programs, such as Boston’s Senior Discount plan.<sup>12</sup> Negotiated to extend at least through 2016, the plan offers cable service at a fixed price for all Boston-based seniors. Encryption of the basic service tier must not be used as a justification to increase the cost of this or similar plans.

The financial benefits flowing to providers from encryption, such as reduced theft of services<sup>13</sup> and a deduction in truck rolls, surely outweigh any additional costs providers would incur to comply with the contractual terms and the spirit of these franchise agreements.<sup>14</sup> And the fact that providers claim that encryption of the basic service tier affects only a small

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<sup>11</sup> See City of Boston, Massachusetts Comments, MB Docket No. 11-169, PP Docket No. 00-67, at 1 (November 28, 2011).

<sup>12</sup> *Id.* at 4.

<sup>13</sup> The cable industry estimates the cost of unauthorized access at nearly \$5 billion. See Comcast Comments, MB Docket No. 11-169, PP Docket No. 00-67, at 9 (November 28, 2011).

<sup>14</sup> See Comcast Comments, MB Docket No. 11-169, PP Docket No. 00-67, at 4-13 (November 28, 2011).

percentage of subscribers merely serves to reinforce this position. We strongly urge the Commission to act appropriately to protect subscribers.

#### **IV. PEG OPERATIONS MUST BE PROTECTED**

We support the comments submitted by the Alliance for Community Media that public, educational, and government (“PEG”) channels not be adversely affected by the encryption of the basic service tier.<sup>15</sup> These channels provide badly needed, and highly valued, local programming and the Commission should take steps to ensure the continued availability of these channels to our residents.

#### **V. PROTECTION FROM “BILL SHOCK”**

We agree with comments filed by Public Knowledge and Media Access Project that two proposed modifications to the proposed rule would protect subscribers from “bill shock.”<sup>16</sup> The first is that the Commission must clarify that “free” means without hidden charges or onerous conditions. The second is that cable system operators give subscribers sufficient notice before the end of the transition period as to how much the rental fee for the box will be and the date on which charges will start to be imposed. However, we believe that such notice must be provided to all subscribers taking part in the program, and not just simply to Medicaid recipient subscribers.

#### **VI. TERM PERIOD**

While the proposed rule envisions a free set-top box term period of five-years for those subscribers on Medicaid, the Commission questions whether “an interim 7-year period or

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<sup>15</sup> See Alliance for Community Media Comments, MB Docket No. 11-169, PP Docket No. 00-67, at 10-11 (November 28, 2011).

<sup>16</sup> See Public Knowledge and Media Access Project Comments, MB Docket No. 11-169, PP Docket No. 00-67, at 10-11 (November 28, 2011).

longer” would work better to “ensur[e] there is not an economic hardship on low-income subscribers.”<sup>17</sup> While it appears that encryption of the basic service tier in the Cablevision matter may have had little effect on consumers, that waiver was granted less than two years ago. As a result, we are unsure whether the five-year period imposed to protect low-income subscribers does just that. It would be prudent for the Commission to impose an interim term of seven-years, the effectiveness of which could be reviewed, and modified if needed, by the Commission.

However, in any event, the applicable term period for the provision of free set-top boxes to existing subscribers should be the greater of that set by the proposed rule, or as envisioned and required under existing franchise agreements.

## **VII. COMMISSION REVIEW**

In 2009, when Cablevision sought permission to encrypt its basic service tier, the City of New York took no position on the waiver request. The City, however, did suggest that any waiver be temporary in nature – three years perhaps – and that the issue be reviewed to evaluate any adverse effects on subscribers. While the Commission declined to adopt this recommendation, we urge the Commission to establish a formal review process, to be conducted within a reasonable period of time following the adoption of any rule pursuant to this proceeding, to determine the impact of such a rule on subscribers.<sup>18</sup>

In this proceeding, it is difficult to determine how many existing subscribers will be impacted by the encryption of the basic service tier and require a free set-top box. The

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<sup>17</sup> *NPRM* ¶ 13.

<sup>18</sup> In the Cablevision proceeding, the Commission imposed a requirement that the company file three reports detailing the effects of encryption on subscribers. *NPRM* ¶ 7. Considering the number of nationwide subscribers that may be potentially affected by the proposed rule, it is reasonable that a similar requirement be imposed by the Commission in this proceeding.

Commission itself states that the number would be “small”<sup>19</sup> and references that only one tenth of one percent of Cablevision’s subscribers required free set-top boxes.<sup>20</sup> The City of Boston suggests that upwards of one-fourth of cable subscribers may be affected,<sup>21</sup> and there is no estimate as to how many institutional subscribers would require set-top boxes. With the potential savings cable providers will receive through the adoption of the proposed rule, we think it prudent that the Commission or its Consumer Advisory Committee review the impact of any rule to ensure that industry savings through encryption of the basic service tier on all-digital cable systems does not result in unexpected financial burdens on subscribers.

## VIII. CONCLUSION

It is imperative that as the Commission considers permitting all-digital cable systems to encrypt the basic service tier, it carefully balances the benefits to industry with the burdens on subscribers. As discussed above, with some important modifications that would offer additional protections for *all* subscribers, it would appear that the Commission’s proposed rule does just that.

Respectfully submitted,



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<sup>19</sup> *NRPM* ¶ 4.

<sup>20</sup> *NPRM* at footnote 20.

<sup>21</sup> *See* City of Boston, Massachusetts Comments, MB Docket No. 11-169, PP Docket No. 00-67, at 5 (November 28, 2011).